



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

January 26, 2005

Mr. Mark G. Mann
Assistant City Attorney
City of Garland
P.O. Box 469002
Garland, Texas 78711-2548

OR2005-00767

Dear Mr. Mann:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 217421.

The City of Garland and the Garland Police Department (the "city") received three requests from different requestors for information pertaining to two named individuals and a specified address. You state you have released most of the requested information, but claim that some of the submitted information is excepted from disclosure under sections 552.101 and 552.130 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." This section encompasses the doctrine of common law privacy. Common law privacy protects information if (1) the information contains highly intimate or embarrassing facts the publication of which would be highly objectionable to a reasonable person, and (2) the information is not of legitimate concern to the public. *Indus. Found. v. Texas Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). The type of information considered intimate and embarrassing by the Texas Supreme Court in *Industrial Foundation* included information relating to sexual assault, pregnancy, mental or physical abuse in the workplace, illegitimate children, psychiatric treatment of mental disorders, attempted suicide, and injuries to sexual organs. *Id.* at 683. In addition, where an individual's criminal history information has been compiled by a governmental entity, the information takes on a character that implicates the individual's right to privacy. *See United States Dep't of Justice v. Reporters Comm. for Freedom of the Press*, 489 U.S. 749 (1989). We have marked the information that is confidential under section 552.101 in conjunction with common law privacy. In addition, to the extent the city maintains any unspecified law enforcement information depicting the named person as a

suspect, arrestee, or criminal defendant, any such information is also excepted from disclosure under section 552.101 in conjunction with common law privacy. However, we note that an individual or an individual's authorized representative has a special right of access to information that would ordinarily be withheld to protect that individual's common law privacy interests. *See* Gov't Code § 552.023(b) (governmental body may not deny access to person to whom information relates or person's agent on grounds that information is considered confidential by privacy principles). Therefore, the information that is private under section 552.101 must be withheld from the public, but it may not be withheld from a requestor who has a right of access to it. *See id.*

The submitted information also contains a social security number. Social security numbers may be withheld in some circumstances under section 552.101 of the Government Code in conjunction with the 1990 amendments to the federal Social Security Act, 42 U.S.C. § 405(c)(2)(C)(viii)(I). *See* Open Records Decision No. 622 (1994). These amendments make confidential social security numbers and related records that are obtained or maintained by a state agency or political subdivision of the state pursuant to any provision of law enacted on or after October 1, 1990. *See id.* We have no basis for concluding that the social security number in the submitted information is confidential under section 405(c)(2)(C)(viii)(I), and therefore excepted from public disclosure under section 552.101 on the basis of that federal provision. We caution, however, that section 552.352 of the Government Code imposes criminal penalties for the release of confidential information. Prior to releasing any social security number information, you should ensure that no such information was obtained or is maintained by the city pursuant to any provision of law enacted on or after October 1, 1990.

The submitted information contains Texas motor vehicle record information. Section 552.130 of the Government Code provides in relevant part the following:

(a) Information is excepted from the requirement of Section 552.021 if the information relates to:

- (1) a motor vehicle operator's or driver's license or permit issued by an agency of this state; [or]
- (2) a motor vehicle title or registration issued by an agency of this state[.]

Gov't Code § 552.130. We agree that the Texas motor vehicle record information highlighted in green in the remaining documents at issue is generally excepted under section 552.130. However, section 552.130 also protects an individual's privacy interests. One or more of the requestors may have an ownership interest in the motor vehicle to which some of the submitted motor vehicle record information pertains, and that requestor would have a special right of access to such information under section 552.023. Accordingly, the

motor vehicle record information highlighted in green in the remaining documents must be withheld under section 552.130 from the public, but it may not be withheld under section 552.130 from a requestor who has a right of access to it. *See id.* § 552.023.

To conclude, (1) the city must withhold under section 552.101 the marked information that is confidential under common law privacy, (2) to the extent the city maintains any unspecified law enforcement information depicting the named person as a suspect, arrestee, or criminal defendant, any such information is also excepted from disclosure under section 552.101 in conjunction with common law privacy, and (3) the city must withhold the Texas motor vehicle information that is highlighted in green in the remaining documents under section 552.130; however, the city may not withhold these types of information if the requestor has a right of access to them under section 552.023. A social security number may be confidential under federal law. With the exception of any information that the city must withhold under sections 552.101 or 552.130, the submitted information must be released.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

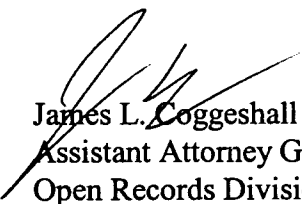
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at (877) 673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at (512) 475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



James L. Coggeshall
Assistant Attorney General
Open Records Division

JLC/seg

Ref: ID# 217421

Enc. Submitted documents

c: Ms. Colleen Green
c/o Tina Smith
2710 Cedar Elm Lane
Garland, Texas 75043
(w/o enclosures)

Ms. Carol A. Wilson
Attorney at Law
1909 Woodall Rodgers Freeway, Suite 410
Dallas, Texas 75201
(w/o enclosures)

Ms. Shen Yin
18250 Marsh Lane #925
Dallas, Texas 75287
(w/o enclosures)